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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/847,590	05/02/2001	Reed Burkhardt	BURK.002US1	6510

7590 04/14/2009  
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APTOS, CA 95003

EXAMINER
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NANO, SARGON N

ART UNIT	PAPER NUMBER
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2457

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/847,590	<b>Applicant(s)</b> BURKHART, REED	
	<b>Examiner</b> SARGON N. NANO	<b>Art Unit</b> 2457	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 - 18 is/are pending in the application.
- 4a) Of the above claim(s) 19 - 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) NONE is/are allowed.
- 6) ☒ Claim(s) 1 - 18 is/are rejected.
- 7) ☐ Claim(s) NONE is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

1. This action is responsive to election/ restriction received on January 9, 2009. Claims 1 – 28 are pending examination. Applicant elected group I (claims 1 – 18) with traverse for examination and accordingly this election is made final. Applicant is reminded the cancellation of claims to a non-elected invention.

### ***Claim Objections***

Claims 1, 3, 8, 9 and 13 are objected to because of the following informalities: the unnecessary use of parenthesis in the above mentioned claims. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear whether the phrase "and/or" is intended to make the claim encompass one or both of the conjoined limitations. For the purposes of this examination, the phrase "and/or" will be interpreted to be an inclusive or, that is, a reference may show either of the limitations or both, and still fall within the scope of the

claim.

Claims 3, 8, 9 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims recite the phrases “**or other automated**”, “**or alternative dedicated**” and “**other aspects of resources**” which render the claims indefinite.

### ***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**2.** Claims 1 - 3, and 6 - 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Breen et al. U.S Patent No. 6,598,027 (referred to hereafter as Breen).

As to claim 1, Breen teaches an automated negotiation and provisioning method for non – trunk wireless bandwidth or storage resources or a system incorporating such resources, in which content is admitted to the individual resources or system, and/or managed within the system via an automated negotiation and provisioning system manager (computer) that allocates resources or directs system operation, comprising the iterated steps of:

inputting into a computer the rules for admission to and/or use of the resources and/or system (see col. 15, lines 14 – 22, Breen discloses that a seller specifies listings of products to be auctioned),

outputting from the computer a summary of the rules (see col. 10, lines 13 – 36, Breen discloses a listings of products that is offered to potential buyer or higher bidder),

inputting into the computer offered terms for admission or use by prospective users of the resource or system (see col. 10, lines 16 – 36, Breen discloses that a potential buyer sends an offer or a bid),

outputting from the computer intermediate determinations and/or final binding terms for successful offers (see col. 1, lines 37 – 55, Breen discloses if a seller accepts the bid from a buyer the auction is completed).

As to claim 2, Breen teaches the method of claim 1, with an additional iterated step of: outputting from the computer command signals to resource or system controllers or other system elements that reflect binding determinations from the automated negotiation and allocation process (see col. 10, lines 37 – 55).

As to claim 3, Breen teaches the method of claim 1, with an additional iterated step of: inputting into the computer telemetry (or other automated or manual observations) to be used in the rules (see col. 10, lines 16 – 36).

As to claim 6, Breen teaches the method of claim 1, in which some of the content admitted to the system or controlled by the system is encrypted in order to permit selective access to the content solely by one or another subset of system receivers intended to receive that content (see col.15, lines 1 - 10).

As to claim 7, Breen teaches the method of claim 1, in which a parameter representing some number of real or hypothetical receivers is used in the rules (see 15, lines 1 - 10).

As to claim 8, Breen teaches the method of claim 1, in which a guide is used to simplify identification of content traversing the resource or system of resources, such guide providing custom-tailored views of content schedules or repositories permissible to be viewed by a given viewer and either communicated over the resource, system resources, or the Internet (or alternative dedicated or dial-up or virtual data transmission circuits) (see col. 15, lines 22 - 53).

As to claim 9, Breen teaches the method of claim 1, in which a guide is used to communicate the status of the rules-based procedure including showing availability of capacity and status of resources and negotiations, such guide being communicated over the resource, system resources, or the Internet (or alternative dedicated or dial-up or virtual data transmission circuits) to system users (see col. 15, lines 22 - 53).

As to claim 10, Breen teaches the method of claim 1, in which the content, terms of offers, and other aspects of resource and/or system operation are categorized for rules-processing, allocation, control, and guide purposes according to sets of parameters associated with a plurality of templates, each template including a certain set of parameters (see col. 13, line 42 – col.15, line10).

As to claim 11, Breen teaches the method of claim 10, in which the parameters include one or more of the following: temporal parameters, start time, duration, maximum acceptable jitter, periodicity, number of instances, rate parameters, minimum

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bit rate, maximum bit rate, average bit rate, conditional minimum bit rate, conditional maximum bit rate, second, or third moments of the bit rate, periodic first, second, or third moments of the bit rate, acceptable probability of rate adaptation, decode buffer status, volume of data, interest area, price to prospective content users or viewers, and other rules of access for prospective users or viewers ( see col. 17, lines 1 - 10).

As to claim 12, Breen teaches the method of claim 1, in which a cache is used to selectively store content received over a broadcast or communication system resource (see col. 5, line 55 – 67).

As to claim 13, Breen teaches the method of claim 12, in which the content admitted to the cache is decrypted (if it had been encrypted) and then re-encrypted (or encrypted for the first time) for controlling access of the content as it is used from the cache (see col.4, lines 4, lines 55 – 62).

As to claim 14, Breen teaches the method of claim 12, in which the cache is positioned directly downstream of a broadcast receiver and positioned directly downstream of the cache is a high-bandwidth localized computer network (see col.).

As to claim 15, Breen teaches the method in which the inputting and outputting take place on different computers connected via a network (see col. 9, line 66 – col.10, line 15).

As to claim 16, Breen teaches the method in claim 1 in which the inputs derive from either real-time elections or agent-actuated elections according to preset condition-based elections (see col. 21 lines 29 - 43).

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As to claim 17, Breen teaches the method in claim1 in which some or all of the steps are recorded and reported to cooperative billing, conditional access, or other cooperative process or system (see col.14, lines 44 - 57).

As to claim 18, Breen teaches the method of claim1, in which a transaction is, effected either creating automatic charges of debits to an account or initiating an instant transfer of funds (see col.14, lines 44 – 57)

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**3.** Claims 4, and 5 , are rejected under 35 U.S.C. 103(a) as being unpatentable over Breen and further in view of Dinwoodie U.S Patent No. 6,415,269 (referred to hereafter as Dinwoodie).

As to claim 4, Breen teaches an automated negotiation and provisioning method for non – trunk wireless bandwidth or storage resources or a system incorporating such resources, in which content is admitted to the individual resources or system, and/or managed within the system via an automated negotiation and provisioning system



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manager (computer) that allocates resources or directs system operation, comprising the iterated steps of:

inputting into a computer the rules for admission to and/or use of the resources and/or system (see col. 15, lines 14 – 22, Breen discloses that a seller specifies listings of products to be auctioned),

outputting from the computer a summary of the rules (see col. 10, lines 13 – 36, Breen discloses a listings of products that is offered to potential buyer or higher bidder),

inputting into the computer offered terms for admission or use by prospective users of the resource or system (see col. 10, lines 16 – 36, Breen discloses that a potential buyer sends an offer or a bid),

outputting from the computer intermediate determinations and/or final binding terms for successful offers (see col. 10, lines 37 – 55, Breen discloses if a seller accepts the bid from a buyer the auction is completed).

Breen does not explicitly teach the “method in which the resource or system of resources includes a geo-synchronous satellite”. However, Dinwoodie teaches an interactive remote auction bidding system for conducting an auction among participants located at a remote location from the auction site utilizes a data input device for communication over a network to the auction site using communication network such as satellite communication (see col.2, lines 24 – 37). It would have been obvious to one of the ordinary skill in the art at the time of the invention to incorporate the geo-synchronous satellite communication as disclosed by Dinwoodie in Breen's invention

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because doing so would enable the participation of prospect bidders at remote location in an auction (see col.3, lines 6 – 17).

As to claim 5, Dinwoodie teaches a terrestrial-based wireless transport (see col.3, lines 6 –17).

**4. *Response to Arguments***

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SARGON N. NANO whose telephone number is (571)272-4007. The examiner can normally be reached on 8 hour.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sargon N Nano/

Examiner, Art Unit 2457

/ARIO ETIENNE/

Supervisory Patent Examiner, Art Unit 2457